REMARKS/ARGUMENTS

In view of the amendments and remarks herein, favorable reconsideration and allowance of this application are respectfully requested. By this Amendment, claims 7-14 have been cancelled. New claims 15-23 have been added. Thus, claims 15-23 are pending for further examination.

Claim Objections

Claim 7 has been cancelled and the new independent claim 15 does not contain the objectionable underlining. Thus Applicant respectfully requests withdrawal of the objection.

Rejections under 35 U.S.C. §103

Independent claim 7 was rejected under 35 U.S.C §103(a) as unpatentable over Wilder (U.S. Pat. 5,408,417 "Wilder") in view of Schelberg, Jr. et al. (U.S. Pat. 5,812,643 "Schelberg") and Martin et al. (U.S. Pat. 5,355,302 "Martin"). Claim 7 was alternatively rejected under 35 U.S.C §103(a) over Martin in view of Wilder and Schelberg. Applicant traverses these rejections.

Regardless of the order in which the references are combmined, Applicant's invention is not obvious in light of the cited art, unless an impermissible hindsight reconstruction of Applicant's invention is performed, using Applicant's own claims and disclosure as a guide. A basic mandate inherent in 35 U.S.C. §103 is that a hindsight reconstruction of the Applicant's invention shall not be the basis for a conclusion of obviousness. See In re Kamm, 172 U.S.P.Q. 698 (C.C.P.A. 1972).

For example, neither Wilder, Schelberg nor Martin teach "a multi-task operating system including at least a determination routine for determining whether a performer who performs a song selected by a user for playback corresponds to any performers participating in at least one upcoming artistic event."

The Office Action dated October 12, 2006, supports this position when it correctly notes that "Wilder and Schelberg fail to disclose a detector for detecting actions on the touch screen that correspond to a user selection of music performed by the artist participating in the artistic event, said detector being provided for initiating the reading of said file, so that said image is shown on the display after a user selection of music performed by the artist participating in the artistic event." The Office Action goes on, in the second 35 U.S.C. §103 rejection, to correctly recognize that Martin also fails to disclose "a detecting means for detecting actions on the touch screen that correspond to a user selection of music performed by the artist participating in [an] artistic event." While Applicant's language has changed slightly in the new claims, Applicant submits that the cited art no more contains "a multi-task operating system including at least a determination routine for determining whether a performer who performs a song selected by a user for playback corresponds to any performers participating in at least one upcoming artistic event" than it contains "a detector for detecting actions on the touch screen that correspond to a user selection of music performed by the artist participating in the artistic event."

In the first 35 U.S.C. §103 rejection, the Office Action does allege that "it would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Wilder and Schelberg to include detecting means for detecting actions that correspond to a user selection of music performed by the artist participating in the artistic event." But Martin "fails to disclose a detecting means for detecting actions on the touch screen that correspond to a user

selection of music performed by the artist participating in [an] artistic event." Consequently, such an obviousness conclusion could only have been come to using Applicant's own invention as a guide and is, as such, impermissible hindsight analysis.

Similarly, in the second 35 U.S.C. §103 rejection, the Office Action alleges that "it would have been obvious at the time to a person of ordinary skill in the art to modify the system disclosed by Martin to include a touch screen, which by nature includes detecting means for detecting actions on the touch screen, which includes detecting when a user selects music that happens to be performed by the same artist who is participating in a coming artistic event." Again, however, since "Wilder and Schelberg fail to disclose a detector for detecting actions on the touch screen that correspond to a user selection of music performed by the artist participating in the artistic event," such an obviousness conclusion could only have been based on an impermissible hindsight reconstruction, using Applicant's disclosure as a guide.

Even if a combination of Martin, Wilder and Schelberg were appropriate, it would produce a jukebox with touch selectable songs and with a touch selectable menu system for purchasing tickets for an event. It would not, however, produce a jukebox with "a multi-task operating system including at least a determination routine for determining whether a performer who performs a song selected by a user for playback corresponds to any performers participating in at least one upcoming artistic event," as that feature admittedly is not taught or suggested by any of the cited art. Only by applying Applicant's disclosure to the combination is that feature known.

Conclusion

Applicant believes that the claims clearly and patentably distinguish the prior art of record and are in condition for allowance, for at least the reasons presented herein. New claims 16-23 should be in condition for allowance based at least on their dependency from claim 15. Thus, favorable reconsideration and allowance of this application are earnestly solicited.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: _____
Joseph S. Presta
Reg. No. 35,329

JSP:bpt
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100